Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of	)	
	)	
Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States	)	IB Docket No. 96-111
	)	
and	)	
	)	
Amendment of Section 25.131 of the Commission's Rules and Regulations to Eliminate the Licensing Requirement for Certain International Receive-Only Earth Stations	)	CC Docket No. 93-23 RM-7931
	)	
and	)	
	)	
COMMUNICATIONS SATELLITE CORPORATION Request for Waiver of Section 25.131(j)(1) of the Commission's Rules As It Applies to Services Provided via the Intelsat K Satellite	)	File No. ISP-92-007

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REPLY COMMENTS OF PANAMSAT CORPORATION

PanAmSat Corporation ("PanAmSat"), by its attorneys, hereby submits the following reply comments with respect to the Further Notice of Proposed Rulemaking (the "Further Notice") in the above-captioned proceeding. The parties commenting on the Further Notice were virtually unanimous in their support of the Commission's proposal to forego applying an ECO-Sat analysis with respect to satellites of WTO member countries, but to apply such an analysis with respect to satellites of non-WTO countries. For the reasons set forth in PanAmSat's initial comments, PanAmSat also strongly endorses such an approach.

PanAmSat is confining its reply comments in this proceeding to the following three issues: (i) the extent to which non-U.S. licensed satellite systems

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should be subject to the same requirements as are applicable to U.S. operators; (ii) the ability of the FCC to deny access to a non-U.S. licensed operator if access by such operator would create a very high risk to competition in the U.S. market; and (iii) access to the U.S. market by IGOs and future IGO affiliates.

I. U.S.-LICENSED SYSTEMS AND NON-U.S.-LICENSED SYSTEMS SHOULD BE SUBJECT TO COMPARABLE RULES AND POLICIES.

PanAmSat agrees with those parties that urge the Commission to subject U.S.-licensed operators and non-U.S.-licensed operators to comparable rules, requirements and licensing policies. As PanAmSat noted in its initial comments on the Further Notice, such an approach is necessary to ensure fair and effective competition.[1]

Although PanAmSat urges the Commission to require all non-U.S. operators participating in U.S. processing rounds to comply with all Part 25 technical, legal and financial qualification standards (including any construction, launch and in-service milestones applicable to U.S. operators), PanAmSat does not believe that it is essential to impose all Part 25 requirements on applicants seeking access to the U.S. market, outside of the context of a processing round, for non-U.S. licensed satellites (or, if the Commission in the future determines to process applications in a manner different than processing rounds, seeking access outside of the context of the applicable application processing procedure). As GE Americom points out, interference issues can be addressed in these instances through the ITU coordination process and technical requirements applicable to U.S.-licensed earth stations seeking to communicate with non-U.S. licensed satellites.[2] Such an approach will protect the integrity of the FCC's spectrum management policies and, it is hoped, induce

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1 Comments of PanAmSat at 8.

2 Comments of GE American Communications, Inc. at 9-10.

other governments to refrain from imposing overly burdensome requirements on U.S.-licensed operators seeking to access their markets.

PanAmSat agrees with other U.S. satellite operators that, to avoid competitive disparities between U.S. and non-U.S. licensed operators, non-U.S. operators serving the U.S. market should be subject to ancillary operating costs, application and regulatory fees, and universal service obligations in the same manner that these requirements are applicable to U.S. operators.[3] Regulatory and application fees applicable to non-U.S. licensed systems should be adjusted to reflect the amount of FCC resources consumed in connection with authorizing access to foreign-licensed systems (as opposed to U.S.-licensed systems). The equitable and non-discriminatory application of regulatory fees and costs is fully consistent with the FCC's national treatment obligations under the GATS and will create a level competitive playing field.

Finally, and as addressed by PanAmSat in its initial comments, all authorizations granted with respect to non-U.S. licensed systems should be subject to the prohibition against maintaining exclusionary arrangements. Absent such a prohibition, U.S. operators could be placed at a substantial competitive disadvantage, particularly if the Commission foregoes (as suggested by PanAmSat and others) an ECO-Sat analysis for requests by WTO member operators to serve non-WTO member routes.

II. THE FCC CAN AND MUST DENY ACCESS TO A NON-U.S. SYSTEM IF FAILURE TO DO SO WOULD RESULT IN A HIGH RISK TO COMPETITION IN THE U.S. MARKET.

Some parties submitting initial comments have taken issue with the Commission's tentative conclusion that it may deny access to a satellite licensed by a WTO member if failure to do so would result in a very high risk to competition in

[3] See, e.g., Comments of GE Americom at 11-12.

the U.S. market. In this regard, these parties assert that the WTO Basic Telecom Agreement requires member nations to use trade dispute mechanisms, and not exclusion from domestic markets, to resolve claims that other WTO member markets are not open to competition. These parties also maintain that opponents of an application to make use of a satellite licensed by a WTO member must demonstrate that grant of the application would be *certain* — as opposed to pose a very high risk — to lessen competition in the United States.

These arguments are without merit. As the Commission has made plain, denial of a request to permit a non-U.S. licensed satellite to access the U.S. market would be based on a determination that grant of the application would pose a very high risk to competition in the U.S. market. Importantly, denial would not be designed to open the home market of such non-U.S. licensed satellite. Moreover, grant of a request that the Commission had determined would result in a very high risk to competition in the United States would contravene the Commission's statutory mandate under Section 309(a) of the Communications Act of 1934, as amended, that applications be approved only if they serve the public interest, convenience and necessity.

Indeed, the Commission, under Section 309(a), would be constrained to deny the request of a U.S. entity seeking to access the U.S. market if grant of such request would pose a very high risk to competition in the United States. Accordingly, denying a request for a non-U.S. licensed system that poses the same competitive threat is fully consistent with the U.S. government's national treatment obligations under the GATS.

This approach also is consistent with the letter United States Trade Representative Barshefsky sent to satellite industry executives prior to the conclusion of the WTO Basic Telecom Agreement. Writing in the context of future

IGO affiliates, Ambassador Barshefsky made plain that "the United States will not grant market access to a future privatized affiliate, subsidiary or other form of spin-off from the ISOs that *would likely lead to anti-competitive results*."[4] Although, as discussed below, future IGO affiliates pose unique competitive risks, there is no reason to believe that the Commission would be constrained to grant access to other non-U.S. systems if to do so would pose a very high risk to competition in the United States.

III. IGO AND FUTURE IGO AFFILIATE ENTRY SHOULD BE SUBJECT TO A SEPARATE PROCEEDING.

PanAmSat, throughout this proceeding and in the context of meetings with government representatives regarding the WTO Basic Telecom Agreement, has warned consistently against the unique competitive threat posed by IGOs and their future affiliates and spin-offs. As such, PanAmSat strongly supports the call by other participants in the U.S. satellite industry to consider the participation by IGOs and their future affiliates in the U.S. satellite market in a separate proceeding.[5]

As GE Americom points out, in light of the fact that the United States has no obligations to the IGOs under the WTO Basic Telecom Agreement, consideration of entry issues involving IGOs can take place in a separate proceeding following the January 1998 deadline for WTO implementation.[6] The separate proceeding could examine a range of specific issues unique to the IGO/IGO affiliate issue, including the level of ownership IGOs could maintain in an IGO affiliate without triggering competitive concerns, the type and number of assets that could be transferred from

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4 Letter dated February 12, 1997, from The Honorable Charlene Barshefsky, United States Trade Representative, to Frederick A. Landman, President and CEO of PanAmSat, at 2 (emphasis added).

5 See, e.g., Comments of GE Americom at 5-7; Comments of Orion at 8.

6 Comments of GE Americom 6.

an IGO to an affiliate without creating competitive disparities, the ability of an IGO to cross-subsidize between its activities and those of its future affiliate, and the extent of government financing in a future IGO affiliate that would be considered anti-competitive *per se*.

As noted by both PanAmSat and GE Americom in their separate initial comments, deferring consideration of the IGO/future IGO affiliate issue is particularly appropriate in light of the pending proposals to restructure Intelsat and the legislation (H.R. 1872) introduced by Representatives Bliley and Markey.

Notwithstanding the fact that — as recognized by every U.S. satellite operator — entry by IGOs and their future affiliates poses a serious competitive threat to the U.S. market, Comsat and a handful of others argue that the Commission should automatically extend to Intelsat the same benefits that the WTO Basic Telecom Agreement gives to WTO member organizations lacking Intelsat's treaty-based advantages and, moreover, should refrain from subjecting future IGO affiliates to any heightened scrutiny. As discussed below, these arguments are without merit.

Although Comsat concedes that Intelsat is not "formally affected by the WTO Agreement," Comsat maintains that, because a number of WTO members also are Intelsat members, access by Intelsat to the U.S. domestic market should be treated identically to access to such market by WTO member entities.[7] In essence, although every WTO government delegation took pains throughout the WTO process to make clear that Intelsat derives no benefits from the WTO Basic Telecom Agreement, Comsat now seeks to obtain these benefits for Intelsat through the back door.

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[7] Comments of Comsat Corporation at 9-12.

That the U.S. government and other WTO members sought to deny Intelsat the benefits of WTO members' market opening commitments is indisputable. As Ambassador Barshefsky explained in her letter to the U.S. satellite industry:

> Our legal conclusion, for which there is a consensus among participants in the WTO negotiations, is that the ISOs do not derive any benefits from a GBT agreement because of their status as treaty-based organizations. The status of ISOs was discussed in detail in the GBT multilateral sessions. No delegation in the GBT negotiations has contested this conclusion.[8]

In light of the fact that access by Intelsat under the WTO Basic Telecom Agreement was discussed in detail and rejected by all the WTO delegations, Comsat must not be permitted to bootstrap access for Intelsat through some other means.

PanAmSat has addressed throughout this proceeding (and in a variety of other contexts) Comsat's other arguments in support of access by Intelsat and future IGO affiliates to the U.S. market. PanAmSat and other participants in this proceeding have demonstrated these arguments to be without merit and, as such, PanAmSat will not re-argue these points here. In any event, as discussed above, PanAmSat agrees with the other U.S. satellite licensees that it is more appropriate to consider the unique issues posed by access by Intelsat and its future affiliates in a separate proceeding. This is particularly true in light of the pending proposals to restructure Intelsat and the Bliley/Markey legislation.

CONCLUSION

The Commission must be commended for the tentative conclusions reached in the Further Notice with regard to the manner in which the WTO Basic Telecom Agreement is to be implemented. These tentative conclusions evidence a

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[8] See n. 4, supra.

commitment by the Commission to fulfill its WTO obligations scrupulously. As discussed above, by ensuring that (i) U.S.-licensed and non-U.S. licensed operators are subject to comparable requirements, (ii) requests that pose a very high risk to competition in the United States are denied, and (iii) the unique competitive threats posed by Intelsat and its future IGO affiliates are identified and addressed, the Commission will create a regulatory framework that will foster full and fair competition in the domestic and international satellite markets. If other WTO members follow the Commission's example, the great promise offered by the WTO Basic Telecom Agreement will be realized.

Respectfully submitted,

PANAMSAT CORPORATION

By: _____
Henry Goldberg
Joseph A. Godles
Daniel S. Goldberg

GOLDBERG, GODLES, WIENER & WRIGHT
1229 Nineteenth Street, N.W.
Washington, D.C. 20036
(202) 429-4900

Its Attorneys

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